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GENERAL COUNSEL'S OPINION NUMBER 55-12, DATED 25 MARCH 1955

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Rights of contract personnel are convertible for staff status if there is a continuity of equivalent benefits.

TO THE DIRECTOR OF PERSONNEL

1. A memorandum from SE-Admin to AD/P, dated 8 February 1955, poses two general questions and apparently requests a ruling on four specific cases all involving conversion of employees to a different status. The first question is whether or not a contract employee whose contract provides for accrual of leave at the rate applicable to staff employees may transfer accrued leave when he is converted to the status of staff employee. The answer appears to be clearly yes. The second question relates to conversion of contract employees and career agents to staff status at one or more steps above the base rate of the grade concerned. Again, the answer is yes. Under Regulation [redacted] Section H 1. a and Section 205 E of Public Law 233, 82nd Congress, as amended, transfers, promotions, re-employment and reinstatement are not new appointments. In our opinion conversion of status is comparable to a transfer where the individual concerned was in fact an employee as opposed to an independent contractor.

2. The SE-Admin memorandum also asks whether a contract employee who has accrued leave may be paid for that leave when converted to staff status or whether he must forfeit such leave. The answer here is that neither is appropriate if the employee has leave benefits equivalent to those of staff employees. Payment for leave would constitute dual compensation where an employee remains in government employment in a different status but under the same leave system (33 Comp. Gen. 209, November 9, 1953).

3. A memorandum of this office, dated 17 February 1953, denied credit for overseas service to a contract agent on his conversion to staff status. However, this decision is distinguishable from the questions and cases put in the SE-Admin memorandum. This distinction lies in the nature of a contract agent as compared to contract or other arrangements which in effect constitute employment. Under Part XIV of the Confidential Funds Regulations a contract agent is defined as an independent contractor. He receives payment for particular defined work and is not entitled to any of the other benefits of government employment, nor is he subject to the detailed controls applicable to employees. Career agents and contract employees are subject to the controls and direction applicable to government employees, and their contracts usually provide for many of the benefits applicable to regular employees. Moreover, in each of the cases presented, the Government by conversion does not acquire a greater liability than it had before such conversion.

4. It follows from the above analysis that Ne--- may be converted to staff status with full credit, including longevity, for service overseas while in a contract status, with all accrued annual and sick leave.

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5. Although No----- did not have a specific home leave provision in his contract, the other terms are apparently equivalent to Ne---'s. Since repatriation at Government expense is provided, and he otherwise meets the criteria of a government employee, it is our opinion that conversion to staff status with credit for overseas service towards the home leave requirement is proper.

6. Ve--- is in effect an employee, and since his contract provided for annual and sick leave at the rate applicable to staff employees, there is no objection to transferring accrued leave when he is converted to staff status. As indicated above, however, he may not receive cash payment for this leave and at the same time remain a government employee on active duty.

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with the right to transfer accrued leave as well as
longevity credits.

[redacted]

LAWRENCE R. HOUSTON
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